

Immigration Enforcement Issues Regarding Arizona Tribes

Tribes are uniquely positioned in many ways when discussing the issues surrounding immigration laws, and because of that, the implementation of these laws will be very fluid.

Officers who encounter tribal members off of tribal lands and Officers employed by a tribe need to be aware of the nuances imposed by law. The following information is provided to assist all officers in the application of the new immigration laws:

- 1) Officers are reminded to be sensitive to Native American issues when presented with presumptive identification of any type. Questions of validity should be handled in the usual manner and they are not necessarily related to immigration status.
- 2) Officers should be aware that some Native Americans have a concern that they will be subjected to immigration questions because of language barriers (difficulty in communicating in English). Officers are reminded that language may be considered but only along with other factors and tribal language is likely an indication of citizenship and legal presence.

Specifically, officers should be aware of a concern that was raised about tribal elders traveling across the state who do not speak English and do not have a valid identification. To find reasonable suspicion that a person is an alien and is unlawfully present but speaks Navajo, Apache or another readily distinguishable tribal language seems highly unlikely but officers should be aware of and sensitive to the fears that exist.

- 3) The law provides that a person is presumed to be lawfully present if the person provides a valid tribal enrollment card or other form of tribal identification. Examples of these documents might be certificates of Indian blood, tribal census documentation or similar identification. However, a comprehensive reference guide for tribal identification is not available at this time and may frequently change.

Special Note:

Available on this DVD is a letter from the Navajo Nation Human Rights Commission describing examples of tribal identification which qualifies as presumptive identification under A.R.S. §11-1051(B). It is by no means an exhaustive list and will vary tribe by tribe.

- 4) Based on agreements made with the federal government, Officers should be aware that there are two tribes that have tribal members who are Mexican Nationals. They are the Pascua Yaqui Tribe and Tohono O'odham Nation. Mexican Nationals who are members of the Tohono O'odham Nation carry tribal identification and regularly cross the border to receive services. These tribal members are lawfully in the United States for these purposes. Advance copies of these tribal identifications have not been received in time to be included in this training. Officers who work in these areas should contact their local tribe to obtain specific information concerning the tribe (or other tribes in their area). Resources exist to speak to these unique circumstances. For example, Captain Larry

Scarber, of AZ DPS, who is the Tribal law enforcement liaison, may be able to assist officers with special situation questions. At this time, he believes that most officers in tribal areas are familiar with the issues and have worked with the tribes for several years.

- 5) If an officer has reason to doubt a person's claim to tribal status the officer may wish to contact a tribal officer. Tribal Officers must regularly determine Indian/non-Indian status to determine their own authority. Decades of experience with such analysis may aid Officers confronted by someone who claims the presumption but does not possess the appropriate identification. In every case, officers shall not consider ethnicity as an indication of unlawful presence.
- 6) While AzPOST does not provide legal advice, the statute states it applies to officials of this state and its political subdivisions. Tribes are not political subdivisions of the state. Therefore, this law does not cover tribal Officers who are not certified to act on behalf of the State of Arizona. It does not apply to tribal officers enforcing tribal law on tribal land on tribal people. State-certified Officers, however, contacting non-tribal members on non-tribal land or state right-of-ways should apply the new laws. As sovereign nations, the tribes will determine, in the first instance, whether and in what ways these statutes apply to them. AzPOST will consider official tribal legal advice to carry weight in its application of these laws to officer discipline cases.

Thanks to the efforts of the AZ Commission of Indian Affairs and multiple Arizona tribes who consulted with us so that we could provide this information to officers.